Electronically Recorded

Official Public Records

Augenne Hinley

Tarrant County Texas

2008 Dec 02 03:46 PM Fee: \$ 24.00

D208442741

Submitter: SIMPLIFILE

3 Pages

Suzanne Henderson

NOTICE OF CONFIDENTIALITY RIGHTS: A NATURAL PERSON MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION BEFORE IT IS FILED IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

XTO REV PROD 88 (7-69) PAID UP (04/17/07)B

OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made this 22 day of October, 2008, between Richard C. McNulty and Merry N. McNulty, husband and wife, Lessor (whether one or more), whose address is: 7440 Lochwood Court, Fort Worth, Texas 76179 and XTO Energy Inc., whose address is: 810 Houston St., Fort Worth, Texas 76102, Lessee, WITNESSETH:

1. Lessor, in consideration of ten dollars and other valuable consideration, receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on said land, lay pipe lines, establish and utilize facilities for surface or subsurface on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land," is located in the County of Tarrant, State of Texas, and is described as follows:

Being 0.449 acres, more or less, out of the Dempsey C. Pace Survey, Abstract Number 1245 and being Lot 2, Block 15, Lake Country Estates Addition, Phase Two, Unit One, an Addition to the East side of Eagle Mountain Lake in the Northwest part of Tarrant County, Texas, according to the Plat recorded in Volume 388-75, Page 33, Plat Records, Tarrant County, Texas and being those same lands more particularly described in a Warranty Deed with Vendor's Lien dated October 24, 1997 from Robert L. Auer and wife, Gall S. Auer to Richard C. McNulty and Merry N. McNulty recorded thereof in Volume 12957, Page 315, Deed Records, Tarrant County, Texas, and amendments thereof including streets, easements and alleyways adjacent thereto, and any riparian rights.

SEE ATTACHED ADDENDUM FOR ADDITIONAL PROVISIONS

This is a non-developmental Oil & Gas Lease, whereby Lessee, its successors or assigns, shall not conduct any operations, as defined herein, on the surface of said lands. However, Lessee shall have the right to pool or unitize said lands, or part thereof, with other lands to comprise an oil and/or gas development unit.

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor by limitation, prescription, possession, reversion, after-acquired title or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 0.449 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus as lump sum consideration for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of years from the date hereof, hereinafter called "primary term," and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal 114 part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted 114 of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when said land continued to the render of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when manufacture of gasoline or other products, the market value, at the mouth of the well, or (2) when used by Lessee of said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, or (2) when used by Lessee of said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, or (2) when used by Lessee of said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, or (2) when used by Lessee of said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, or (2) when used by Lessee of said land or in the manufacture of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing oil or gas, and all such wells are shut-in, in lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as said wells are shut-in, and thereafter this lease may be continued in force as though operations were being conducted on said land for so long as said wells are shut-in and thereafter this lease may be continued of being produced from said wells, but in the exercise of such diligence. Lessee shall not be o

A. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease, severally as to acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease, severally as to acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons so as to contain not more than 640 surface acres plus 10% acreage tolerance; if limited to one or more of more of the following: from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are permitted or required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size permitted or required by such governmental order or rule. Lessee shall exercise said option as to each desired unit straight or exercise as of the date provided for in said instrument or instruments or instruments or instruments are softled or record. Such unit shall become effective on the date such instrument or instruments are so filled of record. Each of said options may be exercised by Lessee at any land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established effective foyalty, operations conducted upon said land under this lease. There shall be elocated to the land covered by this lease within each such unit (or to each separate tract) covered by this le

such unit. Any unit formed may be amended, re-formed, reduced or enlarged by Lessee at its election at any time and from time to time after the original forming thereof by filing an appropriate instrument of record in the public office in which the pooled acreage is located. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

- 5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations, as to the released acreage or interest.
- 6. Whenever used in this lease the word "operations" shall mean operations for and/or any of the following: preparing the drillsite location and/or access road, drilling, testing, completing, recompleting, deepening, sidetracking, plugging back or repairing of a well in search whether or not in paying quantities.
- 7. Lessee shall have the use, free from royalty, of water, other than from Lessor's water wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet to the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.
- 8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations, and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns, shall increase the obligations or diminish the rights of Lessee, including, but not limited to, the location and drilling of wells and the measurement change or division in the ownership of said land or constructive knowledge or notice thereof of or to Lessee, its successors or assigns, no be binding upon the then record owner of this lease until sixty (60) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly records and proceedings, transcripts, or other documents as shall be necessary in the opinion of such record owner to establish the validity of such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.
- 9. In the event Lessor considers that Lessee has not complied with all its obligations hereunder, both express and implied, Lessor shall notify of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any of the canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules as are necessary to operations on the acreage so retained and shall not be required to move or remove any existing surface facilities necessary or convenient operations.
- 10. Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes or other liens, or interest and other charges on said land, but Lessor rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. If this lease covers a less interest in the oil, gas, sulphur, or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.
- 11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.
- 12. Lessor agrees that this lease covers and includes any and all of Lessor's rights in and to any existing well(s) and/or wellbore(s) on said land, other than existing water wells, and for all purposes of this lease the re-entry and use by Lessee of any existing well and/or wellbore shall be deemed the same as the drilling of a new well.
- 13. Notwithstanding anything to the contrary contained in this lease, at the option of Lessee, which may be exercised by Lessee giving notice to Lessor, a well which has been drilled and Lessee intends to frac shall be deemed a well capable of producing in paying quantities and the date such well is shut-in shall be when the drilling operations are completed.
- 14. As a result of land development in the vicinity of said land, governmental rules or ordinances regarding well sites, and/or surface restrictions as may be set forth in this lease and/or other leases in the vicinity, surface locations for well sites in the vicinity may be limited and Lessee may encounter difficulty securing surface location(s) for drilling, reworking or other operations. Therefore, since drilling, operations conducted at a surface location off or said land or other leases in the vicinity, it is agreed that any such operations are associated with a directional well for the purpose of drilling, reworking, producing or other operations under said land or lands pooled therewith, shall for purposes of this lease be deemed operations conducted on said land. Nothing except as expressly stated.

contained in this paragraph is intended to modify any surface restrictions or pooling provisions or restrictions contained in this lease, except as expressly stated.
IN WITNESS WHEREOF, this instrument is executed on the date first above written.
LESSOR(S)
Decreal and In
BY: Richard C. McNulty BY: Merry N. McNulty
STATE OF }
} ss. (ACKNOWLEDGMENT FOR INDIVIDUAL) COUNTY OF
A. SCOTT AVANT Notary Public, State of Texas My Commission Expires July 11, 2012 Signature Notary Public Notary Public
Printed

ADDENDUM

ATTACHED TO AND MADE A PART OF THAT CERTAIN OIL, GAS AND MINERAL LEASE DATED Otober 22, 2008, BETWEEN RICHARD C. MCNULTY AND MERRY N. MCNULTY AS LESSOR, AND XTO ENERGY INC., AS LESSEE, COVERING COUNTY, TEXAS.

THE PROVISIONS OF ADDENDUM SUPERSEDE COMPLETELY ANY PROVISIONS TO THE CONTRARY CONTAINED IN THE LEASE TO WHICH THIS ADDENDUM IS ATTACHED.

- 15. Minerals Covered. Notwithstanding any other provision hereof, this lease covers only oil and gas. The term "oil and gas" means oil, gas, and other liquid and gaseous hydrocarbons and their constituent elements produced through a well bore.
- 16. Gas Royalty. Lessor's royalty shall be calculated free and clear of costs and expenses for exploration, drilling, development and production, including, but not limited to, dehydration, storage, compression, separation by leased premises or prior to delivery into a pipeline or gathering system, whichever occurs first; provided, however, (a) Lessee shall have free use of produced oil and gas for operations conducted on the leased premises or lands pooled therewith, and the royalties on oil and gas herein provided shall be computed after deducting any so used, and (b) and the actual, reasonable costs (including compression and related fuel charges) paid to or deducted by an unaffiliated premises in order to make the oil, gas and other mineral production saleable, increase its value or in order to get the oil, gas and other mineral production to a market.
- 17. Shut-in Royalty. If at the end of the primary term or any time thereafter one or more wells on the leased premises or lands pooled therewith are capable of producing oil or gas or other substances covered hereby in paying quantities, but nevertheless be deemed to be producing in paying quantities for the purpose of maintaining this Lease. A well that has been drilled but not fraced shall be deemed capable of producing in paying quantities. If for a period of ninety (90) pay shut-in royalty of twenty five dollars (\$25.00) per acre then covered by this Lease on or before the end of said 90 shut-in or production therefrom is not being sold by Lessee, then Lessee shall day period and thereafter on or before each anniversary of the end of said 90 –day period while the well or wells are maintained by operations, or if production is being sold by Lessee; provided, however, that if this Lease is otherwise being lands pooled therewith, no shut-in royalty shall be due until the end of the 90-day period next following cessation of such operations or production. Notwithstanding anything to the contrary herein, it is expressly understood and agreed that shut-in royalty for more than one single period of up to two (2) consecutive years.
- 18. No Surface Operations. It is hereby agreed and understood that there shall be no drilling activities on the surface of the leased premises without the prior written permission from the surface owner of the applicable portion of the leased premises. Notwithstanding the foregoing, this waiver of surface shall not be construed as a waiver of the rights of Lessee to utilize the subsurface of the leased premises under this lease, and Lessee shall have the right to exploit, off the leased premises, including, but not limited to, directional or horizontal drilling activity which comes under the instruments other than this lease.
 This drilling surface waiver does not apply to any surface rights associated with
- 19. Vertical Pugh. Upon the expiration of the primary term of this Lease, upon the expiration of any extension or renewal of the primary term, or after cessation of operations as provided herein, whichever occurs last, this Lease shall terminate as to all rights lying below one hundred feet (100') below the stratigraphic equivalent of the deepest formation drilled.
- 20. No Warranties. Lessor makes no warranty of any kind with respect to title to the Land. By acceptance of this Lease, Lessee acknowledges that it has been given every opportunity to investigate and has conducted sufficient investigation to satisfy itself as to the title to the Land, and Lessee assumes all risk of title failures. All warranties that might arise by common law or by statute, including but not limited to Section 5.023 of the Texas Property Code (or its successors), are excluded. If Lessor owns an interest in the Land less than the entire fee simple estate, then the royalties (including or not owned by Lessor) shall be paid out of the royalty herein provided. Lessor will use all its reasonable efforts to assist Lessee to subordinate any rights of a mortgage holder to perfect the Lessee's rights under this lease; provided, however, any necessary subordination shall be obtained by Lessee at Lessee's sole expense. In the event Lessee is unable to obtain a subordination agreement, Lessee, at its option, may discharge any tax, mortgage, or other lien or option of applying the royalties accruing to Lessor toward payment of same and Lessee shall be subrogated to the rights of the holder thereof.

Executed on the date first written above.

LESSOR(S)

BY: Richard C. McNulty

Dyorry D. McNulty
BY: Meny N. McNulty